S.B. CIVIL MISC. APPEAL NO.1148/2006
(Smt.Marudhar Kanwar Vs. Mohan Singh & ors.)

Date of Order :: 3rd September 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Sandeep Saruparia for the appellant

On 15.05.2003, the claimant-appellant, then about 25-27 years in age, while travelling in a bus bearing registration No.RJ 19 P 7008 from Udaipur to Jodhpur sustained grievous injuries on her right arm of fracture of lower end of humerus bone with fracture of upper end of ulna bone for the bus having brushed against an oncoming truck. The claimant filed claim application on 07.11.2003 putting her thumb impressions on the claim application and affidavit; and, while narrating the incident and asserting liability in the driver, owner and insurer of the bus aforesaid, sought compensation in the sum of Rs.32.32 lacs on the grounds, inter alia, that she was self-employed in Beauty Parlour business and was earning Rs.6,000/- per month; that she had all chances of progress in the business but now for her working arm having broken, she was not able to earn at all; that in the young age having suffered such an injury, she would not be able to do any work properly and her entire future was darkened; and that she incurred about Rs.2,00,000/- in treatment including five

operations and Rs.20,000/- for transportation; that her husband suffered further loss while attending on her; and that she was required to employ two attendants for six months and would now require an assistant for the whole life for household work; that she had undergone tremendous pain and suffering; and that her social and family life was ruined.

In evidence, the claimant examined herself as AW-1, her brother Chandraveer Singh as AW-2 and one Ms.Reena, said to be managing another Beauty Parlour as AW-3. The claimant also produced documentary evidence including police investigation papers, her treatment summaries, bills of medical expenditure, educational certificates, two tax returns, disablement certificate etc.

After examining the evidence on record, the Tribunal has found that the accident causing grievous injuries to the claimant occurred for rash and negligent driving of the bus aforesaid; and has held the non-applicants liable for compensation. For quantification, the Tribunal has not accepted the assertion on monthly income of the claimant at Rs.6,000/- but in view of the evidence adduced on record and taking that she had commenced Beauty Parlour business, put an estimate on her monthly income at Rs.3,000/- i.e., Rs.36,000/- per annum; and with reference to 50% permanent partial disablement, as certified, has taken her loss of income at Rs.18,000/- per annum and with application of multiplier of

18 has assessed such loss of income at Rs.3,24,000/-; and has allowed further Rs.4,100/- towards loss during 41 days' hospitalisation. The Tribunal has further allowed Rs.2,75,995/- with reference to the bills of treatment expenditure as produced by the claimant except computer slip Ex.35 for the payment in that relation being included in the receipts Ex.31 and Ex.32. While allowing further Rs.5,000/- towards grievous injury, Rs.2,000/- towards future difficulties, Rs.1,000/- towards transportation, Rs.1,000/- towards attendants and Rs.2,000/- towards special diets, the Tribunal has assessed total loss for the claimant at Rs.6,15,095/-. The claimant seeks enhancement in this appeal.

Learned counsel Mr.Sandeep Saruparia appearing for the claimant-appellant has strenuously contended that with the right arm of the appellant having been rendered totally useless, even when doctors have certified it to be of 50% permanent disablement, so far loss of earning capacity is concerned, the same ought to have been taken at 100% because the claimant would not be able to carry on the work she was engaged in, that of Beauty Parlour; and the injuries have resulted in total loss of earning capacity. Learned counsel further submitted that the Tribunal has been in error in not allowing adequate amount towards non-pecuniary loss though the claimant sustained serious injuries and would carry their after-effects all through her life.

Having given thoughtful consideration to the submissions and having examined the record of the case, this Court is clearly of opinion that the claimant-appellant is not entitled for any enhancement and this appeal does not merit admission.

It is borne out from the injury report Ex.3 that the claimant did suffer with grievous injuries at and around her right elbow with fracture of lower end of humerus with upper end of ulna; and the treatment summaries make out clearly that the claimant has undergone the ordeal of extensive treatment; and has ultimately been certified with 50% permanent disablement under the certificate exhibit 11, issued on the basis of her examination on 13.04.2004 with the Medical Board noticing that she had 'pain and difficulty in movement of right elbow, unable to do any work by right hand, deformity of right elbow with pus discharging sinus and wasting of muscles, right elbow fixed 90° flexion' etc. However, the Tribunal has taken note of all the facts and circumstances and has allowed compensation at Rs.6,15,095/- that could only be said to be an award made liberally and rather on the higher side than the just compensation admissible in this case.

The Tribunal has allowed total amount of Rs.2,75,995/- as evidenced from the bills produced by the claimant appellant towards treatment expenditure. Even when other

components of loss as allowed by the Tribunal at Rs.5,000/- towards grievous injury, Rs.2,000/- towards future difficulties, Rs.1,000/- each towards transportation and attendants, and Rs.2,000/- towards special diets appear to be wee bit on the lower side; and even when the Tribunal has not awarded separate compensation towards loss of amenities of life and towards permanent attendant, the fact remains that the amount of compensation awarded towards loss of earning capacity at Rs.3,24,000/- is highly excessive in this case.

The claimant asserted her income from Beauty Parlour business at about Rs.6,000/- per month i.e., about Rs.72,000/- per annum; and produced tax returns Ex.16 and Ex.18 with accompanying computations of income Ex.17 and Ex.19 respectively. The Tribunal has rightly observed that such assertion on the income remains hollow for no corroborative evidence in the form of bills/vouchers and accounts having been produced. In the absence of cogent corroborative evidence, the income of the claimant cannot be taken at Rs.6,000/- per month merely on the basis of the returns aforesaid; and the estimate as put by the Tribunal on her income at Rs.3,000/- per month cannot be said to be low or unjustified in the fact situation of this case.

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Moreover, the fundamental fact remains that the claimant has not been forthright while making the claim for compensation and has attempted to evoke extra sympathy with pretentious presentation of her case. It is noticed from the claim application as filed and from the statement as made before the Tribunal that the claimant repeatedly attempted to suggest that her right arm was rendered totally useless and she could not do any work. The claimant has put her thumb impressions at every stage of the proceedings including the claim application and has stated in her deposition before the Tribunal that,-

> "पढी-लिखी होते हुए भी मैं आज अगूंठा लगाती हूं व अगूंठा छाप कहलाती हूं । मैं लिखने में पूर्णतया असमथ हो गयी ।"

The fact that such statement is incorrect is demonstrated by the very documents filed by the claimant, of tax return (Ex.16) and of computation of income (Ex.17). It is noticed that the said tax return and its accompanying computation of income relating to the previous year ended on 31.03.2003 were filed before the Income-tax Officer on 30.09.2003 under Receipt No.7211 and significantly, both these documents Ex.16 and Ex.17 carry signatures of the assessee in English; the same signatures as are available on the return (Ex.18) and computation of income (Ex.19) filed in relation to previous year ended on 31.03.2002. The

computation of income Ex.17 states about the assessee having applied for Permanent Account Number on 30.09.2003 though in the previous return for the year ended on 31.03.2002 also, PAN is said to have been applied for; however, leaving this aspect aside, it is but apparent that on 30.09.2003 i.e., about four months after the accident, the claimant did put her signatures in English on the return Ex.16 and computation Ex.17. It is obvious that about a month thereafter, while filing the claim application on 07.11.2003, the claimant has chosen to put her thumb impressions; and then suggested that she could not write at all ! The conduct of the claimant does not inspire confidence.

From the impugned award, it appears that the Tribunal has of course noticed the fact that the return filed after the accident, i.e. the return Ex.16 filed on 30.09.2003, carried signatures in English; and has also referred to the return Ex.18 filed before the accident showing the income at Rs.64,800/-; but has observed only to the extent that these returns were not in specific proof of income; and then has made a cursory observation that it was not stated that signatures on the said returns were of this Marudhar Kanwar (the claimant). The observations are incomplete and the learned Tribunal has failed to consider that if the said returns were not carrying the signatures of the claimant Marudhar Kanwar, then it was moreover a case of the claimant

producing false evidence in support of her assertion on income from Beauty Parlour business. Other way round, accepting the said returns to have been filed by the claimant only (as asserted by her), then, as noticed, her statement and posture that she was unable to put signatures, turns out to be pretentious.

It is to be imbibed that claims for compensation are considered for providing relief to the sufferers or the victims of the results of vehicular accidents; and it inheres in the process of awarding such compensation that the claimant's own conduct must not be questionable. When the claimant is found deliberately putting forth a false case like the present one where the claimant has unnecessarily attempted to exaggerate on her disablement, there does not appear any justification to take liberal view of the matter.

Having examined the matter in its totality, this Court is clearly of opinion that the Tribunal has taken a very liberal view of the matter and assessment of pecuniary loss at Rs.3,24,000/- in this case is much too in excess of reasonable assessment of pecuniary loss. There appears no reason or justification to consider any enhancement in this case.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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